

ORIGINAL

EX PARTE OR LATE FILED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

JUL - 8 1992

Federal Communications Commission
Office of the Secretary

ET Docket No. 92-100
PP-40

In the Matter Of:

PAGEMART, INC.

Request for a Pioneer's Preference
Regarding its Petition for Rulemaking
to Allocate 800 kHz in the 930-931 MHz Band
and to Establish Rules and Policies for a New
Nationwide & Local Personal Information
Messaging Service

ORIGINAL
FILE

ORIGINAL
FILE

**OPPOSITION OF MOBILE TELECOMMUNICATION
TECHNOLOGIES CORPORATION TO PAGEMART, INC.'S
MOTION TO STRIKE**

Mobile Telecommunication Technologies Corporation ("Mtel"), by its attorneys,
herewith submits its opposition to "PageMart's Motion to Strike Formal Opposition and
Reply Comments" submitted July 1, 1992, in the above-captioned proceeding. In its motion,
PageMart, Inc. ("PageMart") asserts that "[t]he Commission should strike Mtel's June 16,
1992 'Formal Opposition and Reply Comments' and issue an Order that Mtel show cause
why sanctions should not be assessed for apparent violation of the ex parte rules."¹
However, PageMart's contentions simply reflect its own inability to read, understand, and
comply with Commission rules and procedures.

No. of Copies rec'd
List A B C D E

0 + 4

¹ PageMart's Motion to Strike Formal Opposition and Reply Comments at p. 8, ET Docket No. 92-100, PP-40 (filed July 1, 1992) ["PageMart Motion"].

Mtel submits that PageMart's motion to strike should be summarily dismissed. In support thereof, the following facts should be considered:

1. PageMart contends that Mtel could not have filed its "Formal Opposition and Reply Comments" consistent with 47 C.F.R. § 1.402(e). The Commission rules, however, expressly allow "any interested party" to file a reply. Thus, there can be no question that Mtel had the right to submit reply comments.

2. PageMart insists that Mtel's reply comments should have been filed on June 1, 1992, as comments. However, as PageMart acknowledges,² Mtel did file timely comments observing that PageMart had not satisfied the Commission's requirement of a technical feasibility demonstration, but deferring substantive analyses in anticipation that PageMart would avail itself of the opportunity to cure such deficiencies on June 1, 1992, as permitted under the Public Notice. Nothing in the Commission's rules or the Public Notice supports PageMart's contention that Mtel's efforts to avoid filing unnecessary or unproductive comments was improper or required prior Commission approval.

3. PageMart asserts that Mtel has engaged in a "procedural gambit" designed to foreclose responses to its comments. In particular, PageMart speculates that "[b]oth the sheer volume of Mtel's reply and opposition, together with the detailed technical materials prepared by its consultants . . . suggest that Mtel has been working on its opposition for many months and intended all along to submit formal oppositions."³ In point of fact, Mtel did not make any decision to oppose any Pioneer Preference request or undertake technical

² *PageMart Motion* at 5 & n.6.

³ *PageMart Motion* at 7.

evaluations of PageMart's submission until the June 1, 1992 deadline for new or supplemented technical feasibility demonstrations had passed.

4. PageMart alleges that Mtel's submission of a "Formal Opposition and Reply Comments" necessitates issuance of " . . . an Order that Mtel show cause why sanctions should not be assessed for apparent violation of the ex parte rules."⁴ While quite willing to bandy about serious charges, PageMart's allegations have no basis in fact or law. Mtel's June 16, 1992, filing was served on PageMart. Thus, the filing was neither "ex parte" nor prohibited.⁵

5. Finally, the motion to strike Mtel's purportedly "untimely" pleading appears to be a "procedural ploy" by PageMart itself. Its "Reply to Formal Opposition" is clearly nothing more than an untimely attempt to address the technical deficiencies in its original proposal. This belated effort is plainly in violation of the cut-off for filing technical feasibility demonstrations and the pleading periods established by the Public Notice.⁶

⁴ *PageMart Motion* at 8.

⁵ Under the Commission's Rules, an *ex parte* presentation in a restricted proceeding is defined as any presentation made which "[i]f written is not served on the parties to the proceeding. . ." 47 C.F.R. § 1.1202(b) (1991).

⁶ Deadline To File Pioneer's Preference Requests 900 MHz Narrowband Data and Paging Service (ET Docket No. 92-100), *Public Notice*, Mimeo 22922 (April 30, 1992).

In view of the foregoing, PageMart's Motion to Dismiss should be summarily dismissed. No basis for the requested relief has been or can be provided. Instead, PageMart has simply misread and misapplied Commission rules and policies.

Respectfully submitted,


By: R. Michael Senkowski
Richard E. Wiley
R. Michael Senkowski
David E. Hilliard
Eric W. DeSilva
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

Dated: July 8, 1992

CERTIFICATE OF SERVICE

I, Kim Riddick, hereby affirm that on this 8th day of July, 1992, I have caused copies of the foregoing "Opposition of Mobile Telecommunication Technologies Corporation to PageMart, Inc.'s Motion to Strike" to be delivered, First Class Mail, postage pre-paid, to the following, except where service by hand is indicated:

Jeffrey Blumenfeld *
Glenn B. Manishin
F. Thomas Tuttle
Blumenfeld & Cohen
1615 M Street, N.W., Suite 700
Washington, D.C. 20005
Attorneys for PageMart, Inc.


Kim Riddick

* - indicates service by hand